

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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3	MILTON LEWIS, JR.,	No. C 08-02337 CW (PR)
4	Petitioner,	<u>Ninth Circuit Case No. 11-15972</u>
5	v.	ORDER VACATING JUNE 10, 2011 ORDER
6	ROBERT HOREL, Warden,	DENYING LEAVE TO PROCEED IN FORMA
7	Respondent.	PAUPERIS ON APPEAL; GRANTING
8		AMENDED REQUEST TO PROCEED IN FORMA
9		PAUPERIS ON APPEAL
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On March 28, 2011, the Court denied on the merits Petitioner's pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254, and also denied a certificate of appealability. Thereafter, Petitioner filed a notice of appeal and a request for leave to proceed in forma pauperis (IFP) on appeal. In support of his request, he submitted the Court's form IFP application with attached documentation of the amount of funds in his prison trust account. The Court denied Petitioner's request. Now pending is Petitioner's amended request to proceed IFP on appeal. Docket no. 36.

Rule 24(a)(3) of the Federal Rules of Appellate Procedure provides that a party proceeding IFP in district court may continue in that status on appeal unless the district court certifies that the appeal is not taken in good faith. Rule 24(a)(3) does not apply in this instance, however, because Petitioner paid the district court filing fee on June 3, 2008. Consequently, Petitioner may proceed IFP on appeal if he meets the requirements of Rule 24(a)(1). Specifically, he must (1) show his inability to pay the filing fee, (2) claim an entitlement to redress, and

1 (3) state the issues he intends to present on appeal. Fed. R. App.
2 P. 24(a)(1)(A)-(C).

3 In his amended request to proceed IFP on appeal, Petitioner
4 acknowledges that when he filed his original request to proceed IFP
5 on appeal he failed to comply with the latter two requirements of
6 Rule 24(a)(1). Consequently, in support of the amended request
7 Petitioner has attached documentation of the amount of funds in his
8 prison trust account, and has set forth a claim of entitlement to
9 redress and a statement of the issues he intends to raise on
10 appeal.

11 Based on the above, the Court finds Petitioner has met the
12 requirements for proceeding IFP on appeal under Rule 24(a)(1).
13 Accordingly, the Court's June 10, 2011 Order denying Petitioner's
14 request to proceed IFP on appeal is VACATED, and Petitioner's
15 amended request to proceed IFP on appeal is GRANTED, so that he may
16 seek a certificate of appealability from the Ninth Circuit.

17 This Order terminates Docket no. 36.

18 The Clerk of the Court shall electronically forward a copy of
19 this Order to the Ninth Circuit.

20 IT IS SO ORDERED.

21 Dated: 3/14/2012

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CLAUDIA WILKEN
United States District Judge